Perdue Farms, Inc. *and* United Food and Commercial Workers Union, Local 204, a/w United Food and Commercial Workers International Union, AFL–CIO, CLC, Petitioner. Case 11–RC–6094

February 2, 1996

DECISION AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

The National Labor Relations Board has considered objections to an election held June 28, 1995 and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 851 for and 952 against the Petitioner, with 53 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings[1] and recommendations, and finds that the election must be set aside and a new election held.

[Direction Of Second Election omitted from pubication.]

MEMBER COHEN, dissenting.

In *Sunrise Rehabilitation Hospital*, 320 NLRB 212 (1995), my colleagues held that payments to off-duty employees who would come to the facility and vote would be grounds for setting aside an election, if such payments exceeded actual transportation expenses. In so holding, my colleagues overruled established precedent to the contrary.[1] I dissented in *Sunrise*. As set forth more fully in that dissent, I believe that the reversal of precedent was unnecessary, unwise and peremptory, i.e., done without knowledge of the relevant facts.

My colleagues now repeat their error and apply *Sunrise* to overturn still another election. I would apply *YMCA* and uphold the election. In this regard, I note that the Employer made the payments in pursuit of the goal of encouraging employees to vote. The hearing officer found that the evidence did not establish that the Employer made the offer only to employees who were perceived as likely to vote against the Union. Nor was the offer of payment coupled with an antiunion message, as it had been in *YMCA*.

Concededly, the payments were, in some respects, larger than those in *YMCA*. The payments were equivalent to 4 hours' pay; the payments in *YMCA* were equivalent to 2 hours' pay. However, the Employer has explained that the 4 hours of pay (approximately $27) was intended to compensate for: (1) the time of traveling back and forth from residence to polling place, a distance that is substantial in many cases; (2) the time for voting; and (3) travel expenses. There is no showing that the amount of money is beyond reasonable reimbursement for the use of an employee's free time and for travel expenses.[2] As the objecting party, the Petitioner bears the burden of establishing the facts to support the objection. Since it failed to do so, I would uphold the election.[3]

[1] In the absence of exceptions, we adopt pro forma, the hearing officer's recommendations to overrule the Petitioner's Objections 6, 9, 10, and 12–15.

In adopting the hearing officer's finding that the Employer's offer and payment of 4 hours of pay to employees not scheduled to work on the day of the election (the Petitioner's Objection 7) was objectionable conduct warranting setting aside the election, we rely only on our recent decision in *Sunrise Rehabilitation Hospital*, 320 NLRB 212 (1995), in which we held that monetary payments to employees ''that exceed reimbursement for actual transportation expenses'' are objectionable.

Additionally, because we adopt the hearing officer's recommendation to set aside the election on the basis of Objection 7, we find it unnecessary to pass on the Petitioner's exceptions as they relate to other objections.

[1] *Young Men's Christian Assn.*, 286 NLRB 1052 (1987) (*YMCA*).

[2] My colleagues would apparently permit an employer to reimburse an employee for travel expenses, but not for use of the employee's free time. There is no explanation for the difference, and I perceive none.

[3] I also find it unnecessary to pass on the other objections inasmuch as the Board majority is setting aside the election based on Objection 7.